

Introduced by Senator CorbettFebruary 20, 2008

An act to add Chapter 12 (commencing with Section 108940) to Part 3 of Division 104 of the Health and Safety Code, relating to product safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 1313, as introduced, Corbett. Product safety: perfluorochemicals.

Existing law prohibits the manufacture, processing, and distribution in commerce of any food contact substance, as defined, containing certain chemicals found to raise health risks, including polybrominated diphenyl ethers.

This bill would, commencing January 1, 2010, prohibit the manufacture, sale, or distribution of products containing perfluorooctane sulfonate acid (PFOS), perfluorooctanoic (PFOA), higher homologues, or precursors to these chemicals, in concentrations exceeding 0.1%.

This bill would also require manufacturers to use nontoxic alternatives when replacing perfluorochemicals (PFCs) or their precursors in their products, and would prohibit manufacturers from replacing PFCs with certain carcinogens and reproductive toxins. The bill would impose specified civil penalties for violations of those provisions. The bill would require that civil penalties collected be deposited in the Hazardous Waste Control Account, for expenditure by the Department of Toxic Substances Control, upon appropriation by the Legislature, to implement and enforce those provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 12 (commencing with Section 108940)
2 is added to Part 3 of Division 104 of the Health and Safety Code,
3 to read:

4

5

CHAPTER 12. PERFLUOROCHEMICALS (PFCs)

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108940. The Legislature finds and declares all of the following:

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(a) Perfluorochemicals (PFCs) and their precursors have been
9 used in the manufacture of stain- and grease-proof coatings for a
10 wide variety of consumer products for more than half a century,
11 and are now found in human blood and wildlife worldwide.

12

(b) PFCs and precursor chemicals that break down into PFCs
13 in the body, wildlife, or the environment are used as food contact
14 substances that represent potential sources of dietary exposure to
15 these chemicals.

16

(c) Recent studies have demonstrated the presence of two
17 particular perfluorochemicals, perfluorooctane sulfonate (PFOS)
18 and perfluorooctanoic acid (PFOA), in more than 98 percent of
19 Americans' blood, and 100 percent of 293 newborns surveyed.

20

(d) PFOA is considered by the federal Environmental Protection
21 Agency (EPA) Science Advisory Panel to be a likely carcinogen
22 and is considered a chemical that induces breast tumors in animals.
23 In addition, PFOA and PFOS have been linked to impaired growth
24 of babies in the womb.

25

(e) Federal Food and Drug Administration (FDA) scientists note
26 that food packaging represents the worst-case scenario for PFCs
27 to migrate into food. In one FDA study, food packaging released
28 several hundred times more PFCs than did cookware coated with
29 substances like Teflon.

30

(f) The EPA has established a voluntary phase-out of certain
31 perfluorochemicals, including PFOA, that will go into effect in
32 2015. PFOS was removed from the market by the only United
33 States manufacturer under pressure by the EPA in 2001.

34

(g) It is in the best interest of California to eliminate the use of
35 dangerous perfluorochemicals and their precursors in food
36 packaging, as soon as reasonably possible.

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108941. (a) For the purposes of this chapter "Food contact
38 substance" is any substance that directly contacts food, and is

1 intended for use as a component of materials used in
2 manufacturing, packing, packaging, transporting, or holding food
3 if that use is not intended to have a technical effect in the food.

4 (b) “Precursor” is any chemical that may reasonably be expected
5 to break down into perfluorooctanoic acid (PFOA), perfluorooctane
6 sulfonate (PFOS), or higher homologues, in the human body,
7 animals, or the environment. When definitive test data are not
8 available, precursors are assumed to include chemicals that contain
9 within their structure PFOA, PFOS, or higher homologues.

10 108942. (a) On or after January 1, 2010, no person or entity
11 shall manufacture, sell, or distribute in commerce any food contact
12 substance that contains perfluorooctane sulfonate (PFOS),
13 perfluorooctanoic acid (PFOA), higher homologues, or precursors
14 to these chemicals, in any concentration exceeding 10 parts per
15 billion (ppb).

16 108943. (a) Manufacturers shall use nontoxic alternatives
17 when replacing perfluorochemicals or their precursors in
18 accordance with this chapter.

19 (b) Manufacturers shall not replace perfluorochemicals or their
20 precursors, pursuant to this chapter, with carcinogens rated by the
21 United States Environmental Protection Agency as A, B, or C
22 carcinogens, or substances listed as known or likely carcinogens,
23 known to be human carcinogens, likely to be human carcinogens,
24 or suggestive of being human carcinogens, as described in the
25 “List of Chemicals Evaluated for Carcinogenic Potential,” or
26 known to the state to cause cancer as listed in the California Safe
27 Drinking Water Act (Chapter 4 (commencing with Section 116270)
28 of Part 12).

29 (c) Manufacturers shall not replace perfluorochemicals or their
30 precursors, pursuant to this chapter, with reproductive toxicants
31 that cause birth defects, reproductive harm, or developmental harm
32 as identified by the United States Environmental Protection Agency
33 or listed in the California Safe Drinking Water Act (Chapter 4
34 (commencing with Section 116270) of Part 12).

35 (d) (1) A person who violates this chapter shall be liable for a
36 civil penalty not to exceed two thousand five hundred dollars
37 (\$2,500) per day for each violation. That civil penalty may be
38 assessed and recovered in a civil action brought in any court of
39 competent jurisdiction. The civil action may be brought by the
40 attorney general, district attorney, county counsel, or city attorney.

- 1 (2) In assessing the amount of a civil penalty for a violation of
- 2 this chapter, the court shall consider all of the following:
- 3 (A) The nature and extent of the violation.
- 4 (B) The number of, and severity of, the violations.
- 5 (C) The economic effect of the penalty on the violator.
- 6 (D) Whether the violator took good faith measures to comply
- 7 with this article and the time these measures were taken.
- 8 (E) The willfulness of the violator’s misconduct.
- 9 (F) The deterrent effect that the imposition of the penalty would
- 10 have on both the violator and the regulated community as a whole.
- 11 (G) Any other factor that justice may require.
- 12 (e) All civil penalties collected pursuant to this chapter shall be
- 13 deposited in the Hazardous Waste Control Account, for expenditure
- 14 by the department, upon appropriation by the Legislature, to
- 15 implement and enforce this chapter.